

111TH CONGRESS
1ST SESSION

S. 470

To combat organized crime involving the illegal acquisition of retail goods for the purpose of selling those illegally obtained goods through physical and online retail marketplaces.

IN THE SENATE OF THE UNITED STATES

FEBRUARY 25, 2009

Mr. DURBIN (for himself and Ms. KLOBUCHAR) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

A BILL

To combat organized crime involving the illegal acquisition of retail goods for the purpose of selling those illegally obtained goods through physical and online retail marketplaces.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Combating Organized
5 Retail Crime Act of 2009”.

6 **SEC. 2. FINDINGS.**

7 Congress finds the following:

1 (1) Organized retail crime involves the coordi-
2 nated acquisition of large volumes of retail merchan-
3 dise by theft, embezzlement, fraud, false pretenses,
4 or other illegal means from commercial entities en-
5 gaged in interstate commerce, for the purpose of
6 selling or distributing such illegally obtained items in
7 the stream of commerce. Organized retail crime is a
8 growing problem nationwide that costs American
9 companies and consumers billions of dollars annually
10 and that has a substantial and direct effect upon
11 interstate commerce.

12 (2) The illegal acquisition and black-market
13 sale of merchandise by persons engaged in organized
14 retail crime result in an estimated annual loss of
15 hundreds of millions of dollars in sales and income
16 tax revenues to State and local governments.

17 (3) The illegal acquisition, unsafe tampering
18 and storage, and unregulated redistribution of con-
19 sumer products such as baby formula, over-the-
20 counter drugs, medical diagnostic tests, and other
21 items by persons engaged in organized retail crime
22 pose a health and safety hazard to consumers na-
23 tionwide.

24 (4) Investigations into organized retail crime
25 have revealed that the illegal income resulting from

1 such crime often benefits persons and organizations
2 engaged in other forms of criminal activity, such as
3 drug trafficking and gang activity.

4 (5) Items obtained through organized retail
5 crime are resold in a variety of different market-
6 places, including flea markets, swap meets, open-air
7 markets, and Internet auction websites. Increasingly,
8 persons engaged in organized retail crime use Inter-
9 net auction websites to resell illegally obtained items.
10 The Internet offers such sellers a worldwide market
11 and a degree of anonymity that physical marketplace
12 settings do not offer.

13 **SEC. 3. OFFENSES RELATED TO ORGANIZED RETAIL CRIME.**

14 (a) TRANSPORTATION OF STOLEN GOODS.—The first
15 undesignated paragraph of section 2314 of title 18,
16 United States Code, is amended by inserting after “more,”
17 the following: “or, during any 12-month period, of an ag-
18 gregate value of \$5,000 or more during that period,”.

19 (b) SALE OR RECEIPT OF STOLEN GOODS.—The first
20 undesignated paragraph of section 2315 of title 18,
21 United States Code, is amended by inserting after
22 “\$5,000 or more,” the following: “or, during any 12-
23 month period, of an aggregate value of \$5,000 or more
24 during that period,”.

1 (c) FRAUD IN CONNECTION WITH ACCESS DE-
 2 VICES.—Section 1029(e)(1) of title 18, United States
 3 Code, is amended by inserting “Universal Product Code
 4 label or similar product code label, gift card, stock keeping
 5 unit number, radio-frequency identification tag, electronic
 6 article surveillance tag,” after “code,”.

7 (d) REVIEW AND AMENDMENT OF FEDERAL SEN-
 8 TENCING GUIDELINES FOR OFFENSES RELATED TO OR-
 9 GANIZED RETAIL CRIME.—

10 (1) REVIEW AND AMENDMENT.—

11 (A) IN GENERAL.—The United States Sen-
 12 tencing Commission, pursuant to its authority
 13 under section 994 of title 28, United States
 14 Code, and in accordance with this subsection,
 15 shall review and, if appropriate, amend the
 16 Federal sentencing guidelines (including its pol-
 17 icy statements) applicable to persons convicted
 18 of offenses involving organized retail crime,
 19 which is the coordinated acquisition of large
 20 volumes of retail merchandise by theft, embez-
 21 zlement, fraud, false pretenses, or other illegal
 22 means from commercial entities engaged in
 23 interstate commerce for the purpose of selling
 24 or distributing the illegally obtained items in
 25 the stream of commerce.

1 (B) OFFENSES.—Offenses referred to in
2 subparagraph (A) may include offenses con-
3 tained in—

4 (i) sections 1029, 2314, and 2315 of
5 title 18, United States Code; and

6 (ii) any other relevant provision of the
7 United States Code.

8 (2) REQUIREMENTS.—In carrying out the re-
9 quirements of this subsection, the United States
10 Sentencing Commission shall—

11 (A) ensure that the Federal sentencing
12 guidelines (including its policy statements) re-
13 flect—

14 (i) the serious nature and magnitude
15 of organized retail crime; and

16 (ii) the need to deter, prevent, and
17 punish offenses involving organized retail
18 crime;

19 (B) consider the extent to which the Fed-
20 eral sentencing guidelines (including its policy
21 statements) adequately address offenses involv-
22 ing organized retail crime to sufficiently deter
23 and punish such offenses;

1 (C) maintain reasonable consistency with
2 other relevant directives and sentencing guide-
3 lines;

4 (D) account for any additional aggravating
5 or mitigating circumstances that might justify
6 exceptions to the generally applicable sentencing
7 ranges; and

8 (E) consider whether to provide a sen-
9 tencing enhancement for those convicted of con-
10 duct involving organized retail crime, where the
11 conduct involves—

12 (i) a threat to public health and safe-
13 ty, including alteration of an expiration
14 date or of product ingredients;

15 (ii) theft, conversion, alteration, or re-
16 moval of a product label;

17 (iii) a second or subsequent offense;

18 or

19 (iv) the use of advanced technology to
20 acquire retail merchandise by means of
21 theft, embezzlement, fraud, false pretenses,
22 or other illegal means.

1 **SEC. 4. SALES OF ILLEGALLY OBTAINED ITEMS IN PHYS-**
 2 **ICAL OR ONLINE RETAIL MARKETPLACES.**

3 (a) IN GENERAL.—Chapter 113 of title 18, United
 4 States Code, is amended by adding at the end the fol-
 5 lowing:

6 **“§ 2324. Physical and online retail marketplaces**

7 “(a) DEFINITIONS.—As used in this section, the fol-
 8 lowing definitions shall apply:

9 “(1) HIGH VOLUME SELLER.—The term ‘high
 10 volume seller’ means a user of an online retail mar-
 11 ketplace who, in any continuous 12-month period
 12 during the previous 24 months, has entered into—

13 “(A) multiple discrete sales or transactions
 14 resulting in the accumulation of an aggregate
 15 total of \$12,000 or more in gross revenues; or

16 “(B) 200 or more discrete sales or trans-
 17 actions resulting in the accumulation of an ag-
 18 gregate total of \$5,000 or more in gross reve-
 19 nues.

20 “(2) INTERNET SITE.—The term ‘Internet site’
 21 means a location on the Internet that is accessible
 22 at a specific Internet domain name or address under
 23 the Internet Protocol (or any successor protocol), or
 24 that is identified by a uniform resource locator.

25 “(3) ONLINE RETAIL MARKETPLACE.—The
 26 term ‘online retail marketplace’ means an Internet

1 site where users other than the operator of the
 2 Internet site can enter into transactions with each
 3 other for the sale or distribution of goods or serv-
 4 ices, and in which—

5 “(A) the goods or services are promoted
 6 through inclusion in search results displayed
 7 within the Internet site;

8 “(B) the operator of the Internet site—

9 “(i) has the contractual right to su-
 10 pervise the activities of users with respect
 11 to the goods or services; or

12 “(ii) has a financial interest in the
 13 sale of the goods or services; and

14 “(C) in any continuous 12-month period
 15 during the previous 24 months, users other
 16 than the operator of the Internet site collec-
 17 tively have entered into not fewer than 1,000
 18 discrete transactions for the sale of goods or
 19 services.

20 “(4) OPERATOR OF AN ONLINE RETAIL MAR-
 21 KETPLACE.—The term ‘operator of an online retail
 22 marketplace’ means a person or entity that—

23 “(A) operates or controls an online retail
 24 marketplace; and

1 “(B) makes the online retail marketplace
 2 available for users to enter into transactions
 3 with each other on that marketplace for the
 4 sale or distribution of goods or services.

5 “(5) OPERATOR OF A PHYSICAL RETAIL MAR-
 6 KETPLACE.—The term ‘operator of a physical retail
 7 marketplace’ means a person or entity that rents or
 8 otherwise makes available a physical retail market-
 9 place to transient vendors to conduct business for
 10 the sale of goods, or services related to the goods.

11 “(6) PHYSICAL RETAIL MARKETPLACE.—The
 12 term ‘physical retail marketplace’—

13 “(A) may include a flea market, indoor or
 14 outdoor swap meet, open air market, or other
 15 similar environment;

16 “(B) means a venue or event—

17 “(i) in which physical space is made
 18 available not more than 4 days per week
 19 by an operator of a physical retail market-
 20 place as a temporary place of business for
 21 transient vendors to conduct business for
 22 the sale of goods, or services related to the
 23 goods; and

24 “(ii) in which in any continuous 12-
 25 month period during the preceding 24

1 months, there have been 10 or more days
2 on which 5 or more transient vendors have
3 conducted business at the venue or event;
4 and

5 “(C) does not mean and shall not apply to
6 an event which is organized and conducted for
7 the exclusive benefit of any community chest,
8 fund, foundation, association, or corporation or-
9 ganized and operated for religious, educational,
10 or charitable purposes, provided that no part of
11 any admission fee or parking fee charged ven-
12 dors or prospective purchasers, and no part of
13 the gross receipts or net earnings from the sale
14 or exchange of goods or services, whether in the
15 form of a percentage of the receipts or earn-
16 ings, salary, or otherwise, inures to the benefit
17 of any private shareholder or person partici-
18 pating in the organization or conduct of the
19 event.

20 “(7) STRUCTURING.—The term ‘structuring’
21 means to knowingly conduct, or attempt to conduct,
22 alone, or in conjunction with or on behalf of 1 or
23 more other persons, 1 or more transactions in cur-
24 rency, in any amount, in any manner, with the pur-
25 pose of evading categorization as a physical retail

1 marketplace, an online retail marketplace, or a high
2 volume seller.

3 “(8) TEMPORARY PLACE OF BUSINESS.—The
4 term ‘temporary place of business’ means any phys-
5 ical space made open to the public, including but not
6 limited to a building, part of a building, tent or va-
7 cant lot, which is temporarily occupied by 1 or more
8 persons or entities for the purpose of making sales
9 of goods, or services related to those goods, to the
10 public. A place of business is not temporary with re-
11 spect to a person or entity if that person or entity
12 conducts business at the place and stores unsold
13 goods there when it is not open for business.

14 “(9) TRANSIENT VENDOR.—The term ‘transient
15 vendor’ means any person or entity that, in the
16 usual course of business, transports inventory,
17 stocks of goods, or similar tangible personal property
18 to a temporary place of business for the purpose of
19 entering into transactions for the sale of the prop-
20 erty.

21 “(10) USER.—The term ‘user’ means a person
22 or entity that accesses an online retail marketplace
23 for the purpose of entering into transactions for the
24 sale or distribution of goods or services.

1 “(11) VALID PHYSICAL POSTAL ADDRESS.—The
2 term ‘valid physical postal address’ means—

3 “(A) a current street address, including
4 the city, State, and zip code;

5 “(B) a Post Office box that has been reg-
6 istered with the United States Postal Service;
7 or

8 “(C) a private mailbox that has been reg-
9 istered with a commercial mail receiving agency
10 that is established pursuant to United States
11 Postal Service regulations.

12 “(b) SAFEGUARDS AGAINST SALES OF ILLEGALLY
13 OBTAINED ITEMS.—

14 “(1) SUSPECTED ILLEGAL SALES ACTIVITY
15 FORMS.—

16 “(A) REGULATIONS.—The Attorney Gen-
17 eral shall promulgate regulations—

18 “(i) establishing a form, called a ‘sus-
19 pected illegal sales activity form’, through
20 which an authorized person may present
21 evidence showing that a transient vendor
22 of a physical retail marketplace, a user of
23 an online retail marketplace, or a director,
24 officer, employee, or agent of the transient
25 vendor or user, has used or is using a

1 physical retail marketplace or an online re-
2 tail marketplace to sell or distribute items
3 that were stolen, embezzled, or obtained by
4 fraud, false pretenses, or other illegal
5 means from the authorized person, or has
6 engaged in or is engaging in structuring;

7 “(ii) requiring that an authorized per-
8 son who submits a suspected illegal sales
9 activity form shall, in a manner to be spec-
10 ified by the Attorney General—

11 “(I) refer in the form to 1 or
12 more specific items, individuals, enti-
13 ties or transactions allegedly involved
14 in theft, embezzlement, fraud, false
15 pretenses, structuring, or other illegal
16 activity;

17 “(II) refer in the form to 1 or
18 more alleged violations of Federal law;

19 “(III) provide along with the
20 form documentary evidence sup-
21 porting the allegations of illegal activ-
22 ity, which may include—

23 “(aa) video recordings;

24 “(bb) audio recordings;

25 “(cc) sworn affidavits;

1 “(dd) financial, accounting,
2 business, or sales records;

3 “(ee) records or transcripts
4 of phone conversations;

5 “(ff) documents that have
6 been filed in a Federal or State
7 court proceeding; and

8 “(gg) signed reports to or
9 from a law enforcement agency;
10 and

11 “(IV) sign the form;

12 “(iii) providing that an authorized
13 person who completes a suspected illegal
14 sales activity form may submit the form
15 and accompanying documentary evidence
16 to the operator of a physical retail market-
17 place or the operator of an online retail
18 marketplace, and that if the authorized
19 person submits the form to the operator,
20 the authorized person shall submit the
21 form and documentary evidence to the At-
22 torney General; and

23 “(iv) ensuring that a suspected illegal
24 sales activity form and accompanying doc-
25 umentary evidence are able to be submitted

1 by an authorized person to the operator of
2 a physical retail marketplace or online re-
3 tail marketplace and to the Attorney Gen-
4 eral by mail and by electronic means.

5 “(B) AUTHORIZED PERSONS.—

6 “(i) IN GENERAL.—For purposes of
7 this section, an authorized person is a per-
8 son who—

9 “(I) offers goods or services for
10 sale to the public as part of a business
11 operation;

12 “(II) has submitted to the Attor-
13 ney General in writing, on a form that
14 shall be promulgated by the Attorney
15 General and made available on the
16 Internet, a request to serve as an au-
17 thorized person; and

18 “(III) has been approved by the
19 Attorney General to serve as an au-
20 thorized person.

21 “(ii) APPROVAL.—The Attorney Gen-
22 eral shall approve a request by a person to
23 serve as an authorized person if the person
24 offers goods or services for sale to the pub-
25 lic as part of a business operation. An ap-

1 proval under this clause shall remain in ef-
2 fect unless the authorized person requests
3 that the Attorney General terminate the
4 approval.

5 “(iii) FEES.—The Attorney General
6 may charge a processing fee to a person
7 solely to cover the cost of processing the
8 approval of the person as an authorized
9 person.

10 “(iv) AGENTS.—An individual who
11 serves as an officer, employee, or agent for
12 a person who offers goods or services for
13 sale to the public as part of a business op-
14 eration may serve as an authorized person
15 on behalf of that person.

16 “(v) LIST.—The Attorney General
17 shall maintain a list of authorized persons,
18 which shall be made available to the public
19 upon request.

20 “(C) AVAILABILITY OF FORMS.—The At-
21 torney General shall make suspected illegal
22 sales activity forms available on the Internet to
23 authorized persons.

24 “(2) DUTIES OF OPERATORS OF PHYSICAL RE-
25 TAIL MARKETPLACES AND ONLINE RETAIL MARKET-

1 PLACES TO CONDUCT ACCOUNT REVIEWS AND FILE
 2 SUSPICIOUS ACTIVITY REPORTS; CONSUMABLE
 3 GOODS.—If an operator of a physical or online retail
 4 marketplace is presented with a suspected illegal
 5 sales activity form and accompanying documentary
 6 evidence from an authorized person showing that a
 7 transient vendor of the physical retail marketplace,
 8 a user of the online retail marketplace, or a director,
 9 officer, employee, or agent of the transient vendor or
 10 user, has used or is using the retail marketplace to
 11 sell or distribute items that were stolen, embezzled,
 12 or obtained by fraud, false pretenses or other illegal
 13 means, or has engaged in or is engaging in struc-
 14 turing, the operator shall—

15 “(A)(i) not later than 30 days after receiv-
 16 ing the form—

17 “(I) conduct a review of the account
 18 of the transient vendor or user for evidence
 19 of illegal activity; and

20 “(II) file a suspicious activity report
 21 with the Attorney General of the United
 22 States; and

23 “(ii) not later than 24 hours after filing
 24 the report described in clause (i)(II), notify the
 25 authorized person who submitted the suspected

1 illegal sales activity form that the operator filed
 2 the report; and

3 “(B) with regard to any items referred to
 4 in the suspected illegal sales activity form that
 5 are consumable or that are medical diagnostic
 6 tests, immediately suspend the ability of any
 7 transient vendor or user who is referred to in
 8 the form as selling or distributing the items to
 9 conduct transactions involving the items, and
 10 notify the Attorney General of such action in
 11 the suspicious activity report.

12 “(3) DUTIES OF OPERATORS OF PHYSICAL RE-
 13 TAIL MARKETPLACES AND ONLINE RETAIL MARKET-
 14 PLACES TO TERMINATE SALES ACTIVITY.—

15 “(A) IN GENERAL.—If an operator of a
 16 physical retail marketplace or an online retail
 17 marketplace is presented with a suspected ille-
 18 gal sales activity form and accompanying docu-
 19 mentary evidence from an authorized person,
 20 the operator shall determine, based on the
 21 form, the documentary evidence, and the ac-
 22 count review conducted by the operator, wheth-
 23 er there is clear and convincing evidence that
 24 the transient vendor of the physical retail mar-
 25 ketplace, a user of the online retail market-

1 place, or a director, officer, employee, or agent
2 of the transient vendor or user, has used or is
3 using the retail marketplace to sell or distribute
4 items that were stolen, embezzled, or obtained
5 by fraud, false pretenses, or other illegal means,
6 or has engaged in or is engaging in structuring.
7 The operator shall describe the determination of
8 the operator under this subparagraph in the
9 suspicious activity report.

10 “(B) ACTIONS.—If the operator of a phys-
11 ical retail marketplace or an online retail mar-
12 ketplace determines that there is clear and con-
13 vincing evidence of an activity described in sub-
14 paragraph (A), the operator shall, not later
15 than 5 days after submitting the suspicious ac-
16 tivity report to the Attorney General pursuant
17 to paragraph (2), either—

18 “(i) terminate the ability of the tran-
19 sient vendor to conduct business at the
20 physical retail marketplace or terminate
21 the ability of the user to conduct trans-
22 actions on the online retail marketplace,
23 and notify the Attorney General of such
24 action; or

1 “(ii)(I) request that the transient ven-
2 dor or user present documentary evidence
3 that the operator reasonably determines to
4 be clear and convincing showing that the
5 transient vendor or user has not used the
6 retail marketplace to sell or distribute
7 items that were stolen, embezzled, or ob-
8 tained by fraud, false pretenses, or other
9 illegal means, or has not engaged in or is
10 not engaging in structuring; and

11 “(II)(aa) if the transient vendor or
12 user fails to present the information within
13 30 days of the request, terminate the abil-
14 ity of the transient vendor to conduct busi-
15 ness at the physical retail marketplace or
16 terminate the ability of the user to conduct
17 transactions on the online retail market-
18 place, and notify the Attorney General of
19 such action; or

20 “(bb) if the transient vendor or user
21 presents the information within 30 days,
22 then the operator shall report the informa-
23 tion to the Attorney General and notify the
24 transient vendor or user that the operator

1 will not terminate the activities of the
2 transient vendor or user.

3 “(C) ATTORNEY GENERAL AUTHORIZA-
4 TION.—The Attorney General or a designee
5 may, with respect to the timing of the opera-
6 tor’s actions pursuant to this paragraph, direct
7 the operator in writing and for good cause to
8 delay such action.

9 “(4) RETENTION OF RECORDS.—

10 “(A) RETAIL MARKETPLACES.—Each oper-
11 ator of a physical retail marketplace and each
12 operator of an online retail marketplace shall
13 maintain—

14 “(i) a record of all suspected illegal
15 sales activity forms and accompanying doc-
16 umentary evidence presented to it pursuant
17 to this subsection for 3 years from the date
18 the operator received the form and evi-
19 dence;

20 “(ii) a record of the results of all ac-
21 count reviews conducted pursuant to this
22 subsection, and any supporting documenta-
23 tion, for 3 years from the date of the re-
24 view; and

1 “(iii) a copy of any suspicious activity
2 report filed with the Attorney General pur-
3 suant to this subsection, and the original
4 supporting documentation concerning any
5 report that it files, for 3 years from the
6 date of the filing.

7 “(B) ONLINE RETAIL MARKETPLACE.—
8 Each operator of an online retail marketplace
9 shall maintain, for 3 years after the date a user
10 becomes a high volume seller, the name, tele-
11 phone number, e-mail address, valid physical
12 postal address, and any other identification in-
13 formation that the operator receives about the
14 high volume seller.

15 “(5) CONFIDENTIALITY OF REPORTS.—No op-
16 erator of a physical retail marketplace or online re-
17 tail marketplace, and no director, officer, employee
18 or agent of the operator, may notify any individual
19 or entity that is the subject of a suspicious activity
20 report or of an account review under paragraph (2)
21 of the fact that the operator filed the report or per-
22 formed the account review, or of any information
23 contained in the report or account review.

24 “(6) HIGH VOLUME SELLERS.—

1 “(A) VALID POSTAL ADDRESS.—An oper-
 2 ator of an online retail marketplace shall re-
 3 quire each high volume seller to provide the op-
 4 erator with a valid physical postal address.

5 “(B) FAILURE TO PROVIDE.—

6 “(i) IN GENERAL.—If a high volume
 7 seller has failed to provide a valid physical
 8 postal address as required in this para-
 9 graph, the operator of the online retail
 10 marketplace shall, not later than 5 days
 11 after the failure to provide the address, no-
 12 tify the user of its duty to provide a valid
 13 physical postal address.

14 “(ii) CONTINUED FAILURE.—If a high
 15 volume seller has failed to provide a valid
 16 physical postal address 15 days after the
 17 date on which the operator of an online re-
 18 tail marketplace provides notice under
 19 clause (i), the operator shall—

20 “(I) terminate the ability of the
 21 user to conduct transactions on mar-
 22 ketplace; and

23 “(II) not later than 15 days after
 24 that date, file a suspicious activity re-

1 port with the Attorney General of the
2 United States.

3 “(C) POSTAL ADDRESS.—If an authorized
4 person submits to the operator of a physical re-
5 tail marketplace or online retail marketplace a
6 suspected illegal sales activity form that alleges
7 illegal activity on the part of a specific transient
8 vendor or user that is a high volume seller, the
9 operator shall, not later than 15 days after re-
10 ceiving the form, provide the valid physical
11 postal address of the high volume seller to the
12 authorized person.

13 “(7) CONTENTS OF SUSPICIOUS ACTIVITY RE-
14 PORTS.—The Attorney General shall promulgate
15 regulations establishing a suspicious activity report
16 form. Such regulations shall require that a sus-
17 picious activity report submitted by an operator to
18 the Attorney General pursuant to paragraph (2) or
19 (6) shall contain, in a form to be determined by the
20 Attorney General, the following information:

21 “(A) The name, address, telephone num-
22 ber, and e-mail address of the individual or en-
23 tity that is the subject of the report, to the ex-
24 tent known.

1 “(B) Any other information that is in the
2 possession of the operator filing the report re-
3 garding the identification of the individual or
4 entity that is the subject of the report.

5 “(C) A copy of the suspected illegal sales
6 activity form and documentary evidence that led
7 to the filing of a report pursuant to paragraph
8 (2).

9 “(D) A detailed description of the results
10 of an account review conducted pursuant to
11 paragraph (2).

12 “(E) A statement of the determination the
13 operator made pursuant to paragraph (3)(A).

14 “(F) If the suspicious activity report is
15 filed pursuant to paragraph (6), a summary of
16 the events that led the operator to terminate
17 the ability of the user to conduct transactions
18 on marketplace.

19 “(G) The signature of the operator.

20 “(H) Such other information as the Attor-
21 ney General may by regulation prescribe.

22 “(c) VOLUNTARY REPORTS.—Nothing in this section
23 prevents an operator of a physical retail marketplace or
24 online retail marketplace from voluntarily reporting to a
25 Federal, State, or local government agency any suspicious

1 activity that the operator believes is relevant to the pos-
 2 sible violation of any law or regulation, provided that the
 3 operator also complies with the requirements of this sec-
 4 tion.

5 “(d) STRUCTURING.—No individual or entity shall
 6 engage in structuring as defined in this section.

7 “(e) ENFORCEMENT BY ATTORNEY GENERAL.—

8 “(1) IN GENERAL.—Any individual or entity
 9 who knowingly commits a violation of, or knowingly
 10 fails to comply with, the requirements specified in
 11 paragraph (2), (3), (4), (5), or (6) of subsection (b)
 12 or subsection (d) shall be liable to the United States
 13 Government for a civil penalty of not more than
 14 \$10,000 per violation.

15 “(2) FALSE STATEMENTS.—

16 “(A) SUSPECTED ILLEGAL SALES ACTIVITY
 17 FORMS.—Any person who knowingly and will-
 18 fully makes any material false or fictitious
 19 statement or representation on a suspected ille-
 20 gal sales activity form or accompanying docu-
 21 mentary evidence may, upon conviction thereof,
 22 be subject to liability under section 1001.

23 “(B) SUSPICIOUS ACTIVITY REPORT.—Any
 24 person who knowingly and willfully makes any
 25 material false or fictitious statement or rep-

resentation in any suspicious activity report required under subsection (b) may, upon conviction thereof, be subject to liability under section 1001.

“(f) ENFORCEMENT BY STATES.—

“(1) CIVIL ACTION.—In any case in which the attorney general of a State has reason to believe that an interest of the residents of that State has been or is threatened or adversely affected by any person or entity who has committed or is committing a violation of this section, the attorney general, official, or agency of the State, as *parens patriae*, may bring a civil action on behalf of the residents of the State in a district court of the United States of appropriate jurisdiction—

“(A) to enjoin further violation of this section by the defendant;

“(B) to obtain damages on behalf of the residents of the State in an amount equal to the actual monetary loss suffered by such residents; or

“(C) to impose civil penalties in the amounts specified in subsection (e).

“(2) WRITTEN NOTICE.—

1 “(A) IN GENERAL.—The State shall serve
 2 prior written notice of any civil action under
 3 paragraph (1) upon the Attorney General of the
 4 United States, including a copy of its com-
 5 plaint, except that if it is not feasible for the
 6 State to provide such prior notice, the State
 7 shall serve such notice immediately upon insti-
 8 tuting such action.

9 “(B) ATTORNEY GENERAL ACTION.—Upon
 10 receiving a notice respecting a civil action under
 11 subparagraph (A), the Attorney General of the
 12 United States shall have the right—

13 “(i) to intervene in such action;

14 “(ii) upon so intervening, to be heard
 15 on all matters arising therein; and

16 “(iii) to file petitions for appeal.

17 “(3) STATE POWERS PRESERVED.—For pur-
 18 poses of bringing any civil action under this sub-
 19 section, nothing in this chapter shall prevent an at-
 20 torney general of a State from exercising the powers
 21 conferred on the attorney general by the laws of the
 22 State to conduct investigations or to administer
 23 oaths or affirmations or to compel the attendance of
 24 witnesses or the production of documentary and
 25 other evidence.

1 “(4) PENDING FEDERAL ACTION.—Whenever a
 2 civil action has been instituted by the Attorney Gen-
 3 eral of the United States for violation of any rule
 4 prescribed under subsection (e), no State may, dur-
 5 ing the pendency of such action instituted by the At-
 6 torney General of the United States, institute a civil
 7 action under this subsection against any defendant
 8 named in the complaint in such action for any viola-
 9 tion alleged in the complaint.

10 “(5) JURISDICTION.—

11 “(A) IN GENERAL.—Any civil action
 12 brought under this subsection in a district court
 13 of the United States may be brought in the dis-
 14 trict in which the defendant is found, is an in-
 15 habitant, or transacts business or wherever
 16 venue is proper under section 1391 of title 28.

17 “(B) PROCESS.—Process in an action
 18 under this subsection may be served in any dis-
 19 trict in which the defendant is an inhabitant or
 20 in which the defendant may be found.

21 “(g) NO PRIVATE RIGHT OF ACTION.—Nothing in
 22 this section shall be interpreted to authorize a private
 23 right of action for a violation of any provision of this sec-
 24 tion, or a private right of action under any other provision

1 of Federal or State law to enforce a violation of this sec-
 2 tion.”.

3 (b) CHAPTER ANALYSIS.—The chapter analysis for
 4 chapter 113 of title 18, United States Code, is amended
 5 by inserting after the item relating to section 2323 the
 6 following:

“Sec. 2324. Physical and online retail marketplaces.”.

7 **SEC. 5. NO PREEMPTION OF STATE LAW.**

8 No provision of this Act, including any amendment
 9 made by this Act, shall be construed as indicating an in-
 10 tent on the part of Congress to occupy the field in which
 11 that provision or amendment operates, including criminal
 12 penalties, to the exclusion of any State law on the same
 13 subject matter that would otherwise be within the author-
 14 ity of the State, unless there is a positive conflict between
 15 that provision or amendment and that State law so that
 16 the 2 cannot consistently stand together.

17 **SEC. 6. EFFECTIVE DATE.**

18 The amendments made by this Act take effect 120
 19 days after the date of enactment of this Act.

